IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 420 of 1991

For Approval and Signature:

Hon'ble MR.JUSTICE S.M.SONI and
MR.JUSTICE J.R.VORA

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements?

2. To be referred to the Reporter or not?

3. Whether Their Lordships wish to see the fair copy of the judgement?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge?

RAMESHBHAI AMTHABHAI

Versus

STATE OF GUJARAT

Appearance:
MR AD SHAH for Petitioner
MR SR DIVETIA, APP for Respondent No. 1

CORAM : MR.JUSTICE S.M.SONI and
MR.JUSTICE J.R.VORA

Date of decision: 20/03/98

ORAL JUDGEMENT

Appellant-original-accused No.1 has filed this appeal against the judgment and order of conviction under section 302 of Penal Code in Sessions Case No.15/91 passed by the learned Principal City Sessions Judge, Ahmedabad on 22nd June, 1991, by which the appellant-accused has been sentenced to undergo rigorous imprisonment for life.

Facts of the prosecution case, in short, are as under:

One Natwarlal Amthabhai, ordinary resident of Meghaninagar area was a kerosene vendor. He was residing with his wife Gajiben and children. As he was not able to carry on well with Gajiben, she had gone away to her father's place. As Gajiben has left for her father's house, Shantaben mother of Natawrlal had come to stay and reside with him. In the evening of 20th September, 1990 at about 6 'O clock, both, Natwarlal and Shantaben had gone to purchase kerosene with their hand-lorry near Madrasi School in Meghaninagar area. On the way back, three brothers of Gajiben met him and told him to go to their place, which Natwarlal, at first, refused. All the brothers of Gajiben insisted Natwarlal to go with them telling him that they would return after taking Gajiben with them. Natwarlal, therefore, accompanied them. By about 9.30 to 10.00 p.m., Shantaben heard that a murder has taken place near Anil Starch. She, therefore, in company of her husband went to the house of Ramesh, accused No.1. She found pool of blood near lamp post opposite to the house of Ramesh. She having learnt that the injured was taken to Shardaben hospital went there and found that Natwarlal was admitted in the hospital in injured condition. Natwarlal was then transferred to VS hospital as his condition was serious. In Shardaben hospital her complaint was recorded and the offence was registered. She had named three brothers of Gajiben wife of Natwarlal who persuaded Natwarlal to accompany them. They were Ramesh, Jayanti and Somabhai, accused No.1, 2 & 3 respectively. PW 12, Satuji investigated into the matter and on completion of the same submitted chargesheet against the accused in the Court of Metropolitan Magistrate, Ahmedabad, who in his turn committed the case to the Ahmedabad City Sessions Court. The learned Additional City Sessions Judge framed charge against the accused under section 302 read with section 34 of Penal Code and also under section 35(1) of the Bombay Police Act. Accused pleaded not guilty and claimed to be tried.

The prosecution led necessary evidence to prove the charge levelled against the accused. On completion of the prosecution witnesses, further statement of the accused was recorded where the accused disclosed that they wanted to lead evidence for defence. Accordingly, four witnesses were examined as defence witnesses. Thereafter, after hearing the learned advocates for both prosecution and defence, the learned Principal City Sessions Judge held the present appellant, accused No.1 guilty of offence punishable under section 302. However recorded acquittal against original accused Nos.2 & 3. State has not preferred appeal against the order of acquittal passed in respect of accused Nos.2 & 3. However, accused No.1 has preferred this appeal.

Before we deal with other contentions raised by the learned advocate for the appellant ('accused' for short) we would like to first deal with the contention that at the relevant time accused was not in the town and had gone for purchase of vegetables with his brother Govindbhai at Vadodara, meaning thereby, the learned advocate has raised the defence of alibi. Whenever the defence raises the contention of alibi, it is the duty of the defence to prove the same with absolute certainty so as to completely exclude the possibility of presence of the person concerned at the place of occurrence. The Supreme Court in the case of State of Maharashtra v. Narsingrao, (AIR 1984 SC 63) has observed in para 18 as under:

> "It is well settled that a plea of alibi must be proved with absolute certainty so as to completely exclude the possibility of the presence of the person concerned at the place of occurrence."

Keeping this principle in mind, we will now consider whether the defence has been able to establish that accused was not present at the place of occurrence. Defence has examined DW 1, Govindbhai Amthabhai to prove this plea. DW 1 has deposed that "Ramesh and I proceeded to go to Vadodara in a train of 6.10 in the evening of the day of incident. We reached Vadodara by about 8.30 at night. It was 12.30 night while purchasing vegetables. I alone returned to Ahmedabad from Vadodara in a tempo with vegetables. Those vegetables were sold by me next day in Jamalpur vegetable market ..... on the next day morning Police Inspector called me. Inspector told me that name of your brother is there in the incident and you call him. I went to call Ramesh. I had gone to call Ramesh in the morning of 22nd September,

1990 by 5 'O clock. I returned to Ahmedabad with Ramesh by about 10.30. I produced Ramesh before the Police." In the examination in chief, this witness has not specifically stated from whom they purchased vegetables, where they ordinarily stay in Vadodara, where Ramesh would have stayed in Vadodara on that night and with whom. The witness has not stated these details in examination in chief. The witness has also failed to disclose these facts in the cross-examination also. He has replied in the cross examination that "..... it is not certain from which businessman of Vadodara I purchase vegetables. We load vegetables between 12.30 to 1.00 midnight and start by tempo from Vadodara. After going to Vadodara, we start our tempo for Ahmedabad with vegetables. After going to Vadodara we contract for tempo to bring vegetables to Ahmedabad. I do not remember the tempo number and the name of owner of the tempo in which we brought vegetables to Ahmedabad on the day of incident. I always go in the train of 6.10 evening. I normally never miss that train. It would be by 3.00 to 3.30 a.m. while reaching Ahmedabad. After reaching Jamalpur market in the tempo, Ramesh would go to sleep for a hour or two in the market and after waking up at about 5.30, he will straightway go for his job in mill company. After finishing duty in Mill Company he would come at home and take rest and Ramesh will come back after two hours and come with me in train to Vadodara. I do not know where Ramesh used to take his lunch. It may happen that for some reason. Some day Ramesh may not come with me to Vadodara. On that day I alone would go to Vadodara. I have no information at whose place Ramesh stayed at Vadodara and where had he gone." He further stated that when he reached in the morning from vegetable market after coming from Vadodara, Jayantibhai and Somabhai were not in the hut of Lalibhai and that he did not inquiry about them. From this evidence, the learned advocate Mr Shah wants to convince us that in the evening of the incident, accused had gone to Vadodara in company of his brother Govindbhai to purchase vegetables and he was not in the town much less at the scene of offence. If one wants to have a plea of alibi accepted, then the defence has to lead evidence with such certainty so as to completely exclude the possibility of the presence of the person concerned [Narsingrao (supra)]. In the instant case DW 1 has said that accused has accompanied him to Vadodara. Except his word, there is no other evidence to support his say, though it would be available. DW 1 then stated that they purchased vegetables from the vegetables market of Vadodara. He was not able to tell the name of the vendors of vegetables from whom he purchased. When he is purchasing vegetables from Vadodara for sale at

Ahmedabad and the same is carried in tempo, it may be that he must be purchasing vegetables from different vegetable vendors. He has not been able to name either one or more of vegetables vendors of Vadodara. He has not even stated the weight and value of the vegetables purchased. He is not able to tell as to what was the tempo number and who was the owner of the tempo in which he brought vegetables from Vadodara to Ahmedabad. From his evidence, it is clear that it is his routine business that he goes to Vadodara by train and comes back with vegetables loaded in tempo. He must be, therefore, in know of tempo owners whose tempoes he must be hiring. It may be that every day same tempo may not be hired. But it cannot be that every day there will be change of tempo and he would not know the name of tempo owner to whom he has to make necessary payment either at Vadodara or on reaching at Ahmedabad. Accused is the real brother of DW 1. DW 1 is taking him every day to Vadodara for purchase of vegetables. Accused is also serving in a Mill company. If accused is taken every day to Vadodara for purchase of vegetables and if he overstays at Vadodara, then it must be within the knowledge of DW 1 as to where he would be residing in the day time till he again reaches Vadodara in the evening. He also normally would know where his brother dines. Though the accused is real brother of this witness, he is not knowing where the accused is taking lunch when he is in Ahmedabad. A simple statement that accused accompanied him to Vadodara and they were at Vadodara in the evening of fateful day cannot be accepted as this does not completely exclude the possibility of presence of the accused. DW 1 has also admitted that it may be that accused may not accompany him some day. Thus the learned Principal City Sessions Judge has rightly not accepted this defence and we do not find any reason to interfere with the same.

Defence has not seriously disputed the fact that deceased has died homicidal death. In the evening of 20th September, 1990, deceased was taken to Shardaben hospital where Dr. Chetan Shukla has found following two injuries:

"1. Contused lacerated wound of 4 x 0.5 x aponeurosis deep over scalp, midline, posteriorly bleeding.

2. Contused lacerated wound of 2 x .04 x aponeurosis deep over left parietal region, bleeding."

As the injured could not be treated for neurosurgery, he

was removed to VS hospital. Doctor at VS hospital has also found the said injuries in addition to one more injury, namely, bruise just above the right eye-brow 4 cm x 3 cm. x 0.5 cm. On demise of the injured, in the post mortem examination also said two injuries along with other superficial injuries are found. Dr. PW 2 has deposed that the said internal injuries corresponding to external injuries were sufficient in the ordinary course of nature to cause death and the cause of death assigned is shock following extensive intracranial haemorrhage. Thus it is clear from the evidence of Dr. PW 2 that the deceased has died a homicidal death.

It is contended by the learned advocate Mr Shah that learned Principal City Sessions Judge has erred in holding that the said injuries on the person of the deceased are caused by the accused. Mr Shah contended that the evidence led by the prosecution to prove that fact is not sufficient to lead to an inference that it is accused and only accused who has caused said injuries as a result of which the injured has died. Mr Shah contended that the injured was alcoholic and it appears that in a drunken condition, he must have fallen down which caused injuries on the skull resulting into subdural haemorrhage. Mr Shah contended that absence of any fracture on the skull makes more probable the defence case than that of the prosecution. Mr Shah contended that the prosecution witnesses cannot be believed as two of the eye witnesses, in his opinion, deposed to the effect which rules out their presence at the scene of offence or their having seen the occurrence of the incident. We will, therefore, first deal with the evidence of those two eye witnesses, namely, Champaben, PW 4, and Gitaben Govindbhai, PW 5. Prosecution has also examined one Badarji Babaji, PW 7 as an eye witness. The learned Sessions Judge has not accepted his evidence and in our opinion rightly and as we accept the reasoning of the learned Principal City Sessions Judge for rejection of his evidence, we do not repeat the same. Evidence of PW 7, Badarji Babaji appears to have been mainly introduced by the prosecution to prove the involvement of commission of offence by accused Nos.2 & 3. Accused No.2 & 3 are acquitted and the State has not preferred appeal against the same. Simply because the evidence of Badarji Babaji, PW 7 is not accepted, it does not adversely affect the evidence of PW 4 & 5.

Before we discuss the evidence of these eye witnesses, it will be relevant to put on record where their huts are located qua the scene of offence. There is row of about 9 huts in north-south direction. They

appear to be facing east and they also have exit on the west. Somewhere in the middle of those huts, there is a hut of one Hiraben from whose hut, it is alleged by the prosecution that an axe is found. On the north of that hut of Hiraben, there is a hut of one Govindbhai to the north of which there is a hut of the accused. On the south of hut of Hiraben, there is hut of PW 6 Champaben. To the south of that hut, there is hut of PW 5, Gitaben and to the south of that hut, there is hut of PW 4, Champaben. On the east at a distance of about 22 ft. the place of incident is located. On the east of the place of incident, there is an electric pole at a distance of about 7 ft. It is in evidence that light was on in that pole at the time of incident. Thus it can be said that scene of offence is located in north-east corner from the house of PW 4 and PW 5 and south-east corner of the hut of the accused.

Keeping in mind the above topography as to the place of incident, we will now appreciate the evidence of PW 4, Champaben. PW 4 in her evidence has stated that "incident happened at about 10.00 in the night. At that time I have already slept in my house. On hearing shouts, I came out of my house. I saw that Ramesh was inflicting blows on Natwarbhai. Ramesh was inflicting blows of axe. I have seen that axe. I can identify that axe. Ramesh was inflicting blows on Natwarbhai with axe on the head portion. Natwar had fallen down there. Then Ramesh ran away." In the cross-examination, she pleaded ignorance that Natwarbhai was known as 'bulydada'. She denied to have stated before the Police that at about 10 'O clock in the night Natwarbhai Amthabhai brother in law of Ramesh Amthabhai, who is known as 'buli' had come on the road near the house of Ramesh and was speaking unsavourily and creating trouble. She had also admitted that when she came out, she first saw that there was grappling between Ramesh and Natvar. She stated that "thereafter Ramesh had gone to his house. Natwar did not chase Ramesh. Natwar stood there and then. Natwar was not speaking anything. He stood there quietly. Ramesh went in his house and at that time, Natwar was not bleeding from any part of his body. When Ramesh went to his house to take axe, persons who were standing near light pole have gone away. When Ramesh came back, Natwar did not make any attempt to run away. I do not know whether Natwar made any attempt to catch hold of axe. Ramesh inflicted two blows of axe from behind on the rear part of head of Natwarbhai. I have not seen by which part of axe, the blow was inflicted. On inflicting two blows of axe, Natwar fell down and Ramesh ran away". Thus, from the evidence of this witness, it is clear that

on hearing shouts she came out of her house and saw that there was grappling between Ramesh and Natwar and then Ramesh went to his house, came back with axe and inflicted two blows of axe on rear part of the head of Natvar from behind. Natwar fell down and Ramesh ran away. This witness has denied that Natvar is known as 'buli'. However, it is proved that she has so stated before the Police that he is known as 'buli'. In our opinion, whether Natvar is known as buli or not whether this witness made such statement or not does not assume any significance in the facts of the present case. Learned advocate Mr Shah has suggested that if Natwar was known as buly and if he is buly, then he would not quietly invite blows of axe on him without any resistance or an attempt to run away. It is in the cross-examination that Natvar was not speaking anything and he was standing quietly. He has not made any attempt to run away nor has he made any attempt to catch hold of the axe to defend himself. Every person reacts differently and also respond differently. Simply because Natwar was not speaking anything and has stood quietly and made no attempt to run away suggests that there was no scuffle. If there was scuffle initially and Ramesh had gone and came with an axe, what made Natwar not to react when Ramesh came with an axe. This, in our opinion, suggests that before Natwar could react to anything, Ramesh has given blows from behind on the rear part of the head as a result of which Natwar has fallen down and blood was found at that place of incident. We do not find any reason not to accept this version of PW 4. The incident took place at 10.00 in the night. Presence of PW 4 in her house is not even disputed nor challenged by the defence. When a hubbub takes place near one's own house, one would surely wake up and peep out of the house and see what is going on. Thus we are not able to find any reason to reject the evidence of PW 4 and, in our opinion, the learned Principal Sessions Judge has rightly accepted the evidence of PW 4.

The prosecution has relied on another eye-witness PW 5, Gitaben. Her house is located on the north of house of Champaben PW 4 and south of the house of Champaben Laxmanbhai, PW 6. Gitaben, PW 5, has deposed that "incident happened at 10 O' clock night. At that time story of Satyanarayan was being read in my house. Neighbouring hut dwellers had not come to my house. ..... there was scuffle between Ramesh and Natwar. When I saw Ramesh had an axe in his hand. Ramesh inflicted a blow of axe on the rear side of the head of Natwar which I saw. As I could not dare any further, I went in my house." In the cross-examination, she has stated that "I

have not seen Natwar falling on the road. ..... Grappling was not with a view to snatch away the axe. Ramesh inflicted blow with edge portion." Though she has denied before the court, however, she has stated before the Police that story reading of Satyanarayan was going on in her house and on hearing the hubbub, her relatives had gone away feeling that the quarrel will exceed the limits. Whether Satyanarayan story reading was over or was going on and on hearing the hubbub, her relations have gone away or not are of of no significance so far as the facts of the present case are concerned. If story reading of Satyanarayan was going on and her relations were there they normally would go away if they come to know that something serious is happening outside the house because of fear of getting involved. If the story reading was over, then it is not that immediately after the story reading is over, people would go away. But they will certainly leave the place immediately if they feel that something serious is going on outside the house. This fact, in our opinion, has no impact on the say of PW 5. The important aspect so far as PW 5 is concerned is that she has stated that when she came out of the house on hearing the hubbub, she saw Natwar and Ramesh grappling and Ramesh had an axe in his hand. Every person reacts differently on hearing hubbub. Some may react instantly, some may react after some time is elapsed. Some reacts after some time because they may have the feeling that it may be over in a few minutes. If it is over, they will immediately try to look into the cause of hubbub. Some would rush to the place of incident, some would choose to sit in their house, some may jump to the scene and some may abstain from the place. PW 5 has stated that she has seen grappling with Natwar with an axe in the hand of Ramesh. Such grappling cannot be one sided. A reply is given to a specific question in the cross-examination that the grappling was not with a view to snatch away the axe. Thus it appears that PW 5 reacted to the noise of hubbub a little later than it was reacted by PW 4. PW 4 has seen the incident just from the beginning while PW 5 have seen the incident a little late in time than that of PW 4. Therefore, the stage is changed. Initially when PW 4 saw the incident, the accused had no axe with him. However accused had gone to his hut and came back with an axe. It appears that PW 5 had seen the incident at a point of time when the accused came back with an axe. Defence was not able to extract anything from the cross-examination of PW 5 on the basis on which the Court is required to reject her evidence. The contradiction to the effect that whether story reading of Satyanarayan was going on or not, in our opinion, is not that significant to reject her evidence

on the ground that she has not seen the incident. Thus, we do not find any reason to reject her evidence and, in our opinion, the learned Principal City Sessions Judge has rightly accepted her evidence.

Learned advocate Mr Shah contends that the evidence of PW 4 and PW 5 is conflicting on material aspect and therefore the evidence of both these witnesses should be rejected as it is not possible to reconcile their evidence. It is the principal of criminal jurisprudence that the evidence of each witness is required to be appreciated independently and it cannot be evaluated or compared quo the other witness. Evidence of one witness may be truthful and acceptable while the evidence of another witness may not be truthful and acceptable. Simply because the evidence of one witness is not acceptable, that does not entitle the Court to reject the evidence of witness who is a truthful one. Therefore, if evidence of PW 4 is acceptable, simply because there is some variation which according to the defence lawyer is a serious variation from the evidence of PW 5, the evidence of PW 4 does not require rejection. Evidence of PW 4 or PW 5 either stand on its own or fall on its own. In our opinion, the variance between the evidence of PW 4 and PW 5 is reconcilable and it is not required to be rejected. One witness enters the scene of offence at one stage of incident and second witness enters a little late and witnesses the incident, would naturally say from the stage at which he or she witnesses the incident. He or she cannot say what happened prior to he/she witnessing the incident. So as to the case in case of PW 4 and PW 5. Evidence of PW 4 and 5, therefore, in our opinion is not contradicting each other, but in our opinion it corroborates to certain material aspect. Thus, the learned Principal City Sessions Judge has rightly accepted the evidence of PW 4 and 5. From the evidence of PW 4 and 5 it is clear that it is accused who has inflicted axe blows on the rear part of the head of the deceased and caused those two injuries referred to and certified by Doctors PW 2, PW 9 and PW 10.

Mr Shah, learned advocate for the accused, relying on two facts has contended that for non-examination of Hiraben, sister of the accused, the Court should draw adverse inference in favour of the accused. In the cross examination of Gitaben, PW 5, she has admitted that at time of incident, wife of Ramesh and Hiraben were standing outside and that the prosecution has found the muddamal axe from the house of Hiraben. Mr Shah contended that in the panchnama of scene of offence

it is stated that eatables in the house of Hiraben were found lying scattered. Mr Shah contended that eatables were found lying scattered in the house of Hiraben, the muddamal axe was found from her house and Hiraben was found present at the time of incident. Non-examination of Hiraben, therefore, must adversely affect the case of the prosecution to the effect that the prosecution is not coming out with the true genesis of the case. It may be that Hiraben might have caused injury or it may be that Hiraben knows who is the real culprit. If Hiraben would have been examined, she could have thrown light on the prosecution case. Mr Shah further contended that it is surprising that the Investigating agency has not searched the house of the accused. According to Mr Shah, it was necessary to search the house of the accused firstly to see whether the accused is hiding himself there or not and secondly whether any incriminating article like his cloth were hidden there or not. Be as it may be, the house of the accused is not searched. Muddamal axe with blood stains was found from the house of Hiraben. Blood stains found on the head of the axe, no doubt, are stains of human blood, but the group is not detected. From the head of the axe human hairs are found, but the prosecution is not able to link those heirs with that of the deceased. For non-examination of any witness under the provisions of Evidence Act adverse inference is required to be drawn. The question is what adverse inference should be drawn. If witness is not examined by a party to prove his case, then adverse inference so far as that witness is concerned can be drawn only to the effect that the said witness will not support the case of the party who is going to examine him. Thus at the most, inference which can be drawn is that Hiraben would be unfavourable to the prosecution. A witness unfavourable to the prosecution means that the witness would not uncover the story which would be helpful to prove the case of the prosecution. The story which could have been uncovered by examining that witness is also required to be suggested by the defence. Simply because the witness is not examined by itself cannot be said that it is to uncover a story which the defence thinks right. The prosecution may think twice before dropping a witness if cited as witness and if not cited, it will think over to examine the witness even at the stage of arguments of the case. A defence of drawing inference adverse to the prosecution case for non-examination of the witness cannot be raised in absence of specific fact which is required to be inferred against the prosecution. According to the defence, an attempt was made to show that the deceased had come to the house of the accused as his wife was there but as he was overdrunk, he has fallen

down and injury is caused on his head. In absence of contused lacerated wound on the rear side of the head, this story of the defence sounds probable, but by fall contused lacerated wound as caused on the person of the deceased may not be caused by a simple fall as deposed by the doctor. Thus, we do not find any reason to draw adverse inference against the prosecution for non-examination of Hiraben.

Learned advocate Mr Shah relying on certain observations in the book 'Essentials of Forensic Medicine', 5th Edition of Dr. K.S.Narayana Reddy, at page 181, 182 as well as Dr. Modi's Medical Jurisprudence, page 307, has contended that deceased being an alcoholic has first entered into trauma and then coma because of fall, there is sub-dural haemorrhage resulting into his death as it could not be treated as there was no fracture of skull and the doctors are not able to treat except by conservative method. Mr Shah contended that the injuries on the person of the deceased were not the injuries inflicted by the accused, but the said injuries were caused by fall as deceased was a heavy alcoholic. An attempt was made in the cross-examination of the doctors, in particular PW 9 and 10 to show that at the relevant time when he was examined by the doctors, the deceased was drunk. However, doctors have said that they have not tested the patient to find out whether he has consumed alcohol or not. They have treated him as he had serious injuries on his head.

Mr Shah relying on the above referred two books contended that if alcoholics fall from a vehicle in motion, the alleged injuries because of which the deceased has died may be caused and a person may die. The relevant portion on which Mr Shah has relied on in Modi's book reads as under:

> "Vault -- Fracture of the vault occurs at the place of contact by direct violence or at its opposite side by contre-coup (counter side), when the head is not supported. It may be depressed, crushed or fissured. An extensive fracture running parallel to the two points of contact (bursting fracture) will occur, if mechanical force is applied on one side of the head when it is pressed on the other side against a hard substance, such as a wall, while the individual is standing, or against the hard ground or floor, when he is in a lying posture. In such cases the fracture may extend transversely to the base of the skull.

If not associated with an external wound fracture of the vault is not always easily diagnosed. In such cases it is best to rely on the general symptoms resulting from injury to the meningeal vessels, cerebral sinuses and brain.

Fractures of the vault, though dangerous, do not always end in death. Modi had seen cases in which recovery occurred after the vault of the skull was fractured."

xxxxx
xxxxx

"The result is not always fatal. Sometimes recovery takes place, though headache, deafness, or other nervous derangements may persist for a long time."

xxxxx
xxxxx

"In some cases the bleeding is both arterial and venous. It is seen in 1 to 3 per cent of cases of head injury. These haemorrhages are uncommon in the first 2 years of life, due to the greater adherence of the dura to the skull and the absence of a bony canal for the artery, but are common in adults between 20 to 40 years. Haemorrhage may occur due to fall from a small height or by being stuck by a moving object or after a trivial accident. The initial distortion probably separates the dura from the skull, but as haemorrhage continues, further stripping of dura occurs with more tearing of the communicating vessels between the skull and the dura and further bleeding. Bleeding may continue for many hours or even a day after the injury. In most cases the fracture is of fissured type, but sometimes it is depressed. Rarely the haemorrhage is found without any fracture of the skull or any external injury to the head. In almost all cases, the haematoma is directly under the site of surface injury. Bleeding from the main anterior branch of middle meningeal artery covers the motor area of the brain and tends to run down into the middle fossa. The clot is sharply defined, with an arched, almost semi-circular, outer border on the outer side of the dura, which presses it inward and causes a

localised concavity of the external surface of the brain. The clot is oval or circular, about 10 to 20 cm. in diameter, 2 to 6 cm. thick, weighs 30 to 300 g. and is adherent to the dura matter. The clot is usually in the temperoparietal area or in the frontotemporal or parieto-occipital region. Occasionally it is frontal or seen in the posterior fossa. The haematoma cannot be contre-coup unless the skull has been grossly deformed. If it is bilateral, then trauma has been bilateral, or a midline structure, such as the sagital sinus has been injured.

The accumulation of blood is most rapid when coming from a torn artery, slowest when coming from a torn vein and intermediate when both arterial and venous. About 50 percent of cases have a second haemorrhage; subdural, subarachnoid or intracerebral. External haemorrhage at the base of the skull is rare. Extradural haematoma may occasionally spontaneously become smaller due to escape of the blood through a fracture into the subcutaneous tissues and form a haematoma of the scalp. Small haematoma may undergo slow resorption by phagocytes derived from the perivascular cells of the dura.

In typical case there is a history of head injury, which initiates the bleeding and will usually cause temporary unconsciousness. This is followed by a period of normal consciousness, the "Lucid interval" of one or more hours duration. As the pressure on the brain increases, the patient first becomes confused and may appear to be drunk. The confusion indicates shifting of the cerebral hemisphere under pressure towards the opposite side producing stress around third ventricle and the midbrain. With increasing pressure sleep and coma occur. In about an quarter of cases there is no initial unconsciousness. Increasing weakness occurs in the face or arms on the side opposite to the haemorrhage and spreads to the leg. Pupil is dilated and not reactive to the light usually on the side of haemorrhage. Later there is bilateral dilation and fixation of the pupils, decerebrate rigidity and death. Lucid interval is not seen if the injury to the brain is sufficiently great, because of the overlapping

of unconsciousness due to the brain injury and due to the pressure of epidural haemorrhage. The usual cause of death is respiratory failure due to compression of the brain stem. Tentorial herniation occurs largely from the pressure of the blood clot and also due to brain swelling beneath the haematoma 20 to 50 per cent cases re fatal. In autopsy, gentle removal of blood may show the break in the vessels and a fissured fracture of the nearby skull, sometimes confined to the inner table."

xxxxxxx
xxxxxxx

"Subdural haemorrhage may occur from relatively slight trauma, often insufficient to cause unconsciousness and usually not producing fractures of the skull. They may occur after fights or falls, and are especially likely to be found in alcoholics and in children."

Relying on these observations, Mr Shah contended that the cause of death is shock following extensive intracranial haemorrhage. The deceased was an alcoholic and as held at page 183 referred to above, subdural haemurhage may occur from relatively slight trauma, often insufficient to cause unconsciousness and usually not producing fractures of the skull. They may occur after fights or falls, and are especially likely to be found in alcoholics and in children. In the present case, it is contended by Mr Shah that the deceased was alcoholic and there was no fracture of the skull and he had gone in coma immediately from the time of incident. Relying on the evidence of defence witnesses, Mr Shah contended that the deceased was an alcoholic as he was prosecuted as bootlegger and there were allegations that he was alcoholic and such injuries can be caused to alcoholic when they fight or fall. It is in evidence that there was grappling between the deceased and accused and it is also in evidence that the deceased has fallen down. In our opinion, this argument of Mr Shah is ;more academic than affecting the facts of the present case. No doubt, deceased has died because of sub-dural haemorrhage and sub-dural haemorrhage is caused because of the injuries on the head. Injury on the head is caused by axe by the accused and the same is proved by oral evidence of PW 4 and 5. If evidence of PW 4 and 5 is not accepted and if the court do not believe that it is the accused who has caused injuries on the person of the deceased, then injuries on the person of the deceased automatically

stands explained that it was due to fall as deceased being alcoholic.

As we do not find any variance between the ocular evidence and the medical evidence, we do not refer to and discuss in detail the two judgments cited by Mr Divetia and they are, AIR 1984 SC 1233, and AIR 1990 SC, 1242.

Mr Shah then contended before us in the alternative that the doctor has not positively certified to the effect that the injuries on the person of the deceased were sufficient in the ordinary course of nature to cause death and if the doctor has not certified that the injuries were not sufficient in the ordinary course of nature to cause death and if death is caused by the alleged injuries then the case would not fall within the purview of section 302 of Penal Code but would fall within the scope of section 304 Part II of the Penal Code. To substantiate this argument, Mr Shah has relied on the judgment in the case of Ram Jattan v. State of UP (AIR 1994 SC 1130). The relevant observations read as under:

"Now, coming to the injuries on the deceased, the doctor who first examined him, when he was alive, found 11 injuries. Out of them, injuries Nos.1 and 2 were punctured wounds. Injury No.5 was an incised wound and injury No.6 was a penetrating wound. All these injuries were on the upper part of the right forearm and outer and lower part of right upper arm. The remaining injuries were abrasions and contusions. The doctor opined that except injuries Nos.7 and 9 all other injuries were simple. He did not say whether injuries Nos.7 and 9 were grievous but simply stated that they were to be kept under observation. The deceased, however, died the next day i.e. 9.4.74 and the post-mortem was conducted on the same day. In the post-mortem examination 11 external injuries were noted but on the internal examination the doctor did not find any injury to the vital organs. He, however, noted that 8th and 9th ribs were fractured. Now, coming to the cause of death, he opined that death was due to shock and haemorrhage. It is not noted that any of the injuries was sufficient to cause death in the ordinary course of nature. It could thus be seen that neither clause 1 nor clause III of Section 300 are attracted to the facts of this case. This contention was also put forward before the High Court but the learned Judges

> rejected this contention observing that the fracture of 8th and 9th rib must have resulted in causing death and therefore these injuries must be held to be sufficient in the ordinary course of nature to cause death. We are unable to agree with this reasoning. In the absence of proof by the prosecution in an objective manner that the injuries caused were sufficient in the ordinary course of nature to cause death, the same cannot be interfered with unless the injuries are so patent. As we have noted above except fracture of ribs there was no other injury to any of the vital organs. As a matter of fact internally the doctor did not notice any damage either to the heart or lungs. Even in respect of these two injuries resulting in fracture of the ribs, there were no corresponding external injuries. Again as already noted all the injuries were on the non-vital parts of the body. The learned counsel for the State, however, submitted that a forceful blow dealt on the arm might have in turn caused the fracture of the two ribs. Even assuming for a moment it to be so, it is difficult to hold that from the circumstance alone the common object of the unlawful assembly of 12 persons to cause the death of the deceased is established."

In the instant case, PW 10, Dr. Someshchandra has admitted in the cross-examination that these injuries are likely or unlikely depending on the circumstances to cause death in the ordinary course of nature. In the examination inchief, he has deposed that "depending upon the force of the impact, such injuries in the ordinary course of nature would result into death". Dr. Chetna Shah, PW 2 who has performed autopsy has stated that external injuries corresponding to internal injuries are sufficient in the ordinary course of nature to cause death. This doctor in the cross-examination has specifically stated that it is not true that by these injuries, death may not be caused and death can be caused by these injuries. Dr.PW 10 has said that it all depends on the impact with which the injury is caused which injury may ultimate cause death. The question, therefore, before us is whether can it be said that these injuries are sufficient in the ordinary course of nature to cause death. It will be relevant to read the statement of Dr. Someshchandra, PW 10. His statement that "these injuries are likely or unlikely depending on circumstance to cause death in the ordinary course of nature" is in the context of what he has deposed in his evidence. In para 9 of his evidence, he has deposed that

"bruise injury over the right eye must have been caused by any blunt substance. This injury would be possible by coming into contact with any rough surface. These injuries did not warrant surgical operation. These injuries are likely or unlikely depending on circumstance to cause death in the ordinary course of nature". Therefore, in our opinion, his admission in the cross-examination that these injuries are likely or unlikely depending on circumstances to cause death in the ordinary course of nature is required to be read in context of his say in the examination in chief that depending upon the force of the impact, such injuries in the ordinary course of nature would result into death. In the instant case, no fracture of skull is found and injuries are two CLW as referred above. When the doctor who performed autopsy has specifically stated that these injuries are sufficient in the ordinary course of nature to cause death, Dr.Someshchandra, PW 10, has given an opinion after qualifying the facts. He has stated that likelyhood or unlikelyhood to cause death in the ordinary course of nature by the alleged injuries would depend on the circumstances. He has not performed the autopsy. He has no occasion or an opportunity to see the internal injuries. He has opined on the basis of the external injuries which he has treated initially when the deceased was alive. Therefore, in our opinion, the opinion of Dr. Someshchandra is vague one while that of Dr.Chetna, PW 2 is a specific one having looked into the internal injuries of the person. Therefore, in our opinion, that opinion should be preferred to the opinion of Dr. Someshchandra, PW 10. Thus, in our opinion, the prosecution has been able to prove that the injuries on the person of the deceased, particularly those on the head, are sufficient in the ordinary course of nature to cause death.

Again the question arises whether the case will fall within the purview of section 304 Part II or under section 302 of the Penal Code. Mr Shah contended that it is in evidence that if there is a probability of these injuries by fall as per the medical evidence and as per the ocular evidence the injuries are caused by the accused by axe, then the benefit of doubt in the mind of prosecution should go to the accused. The attempt of defence is to bring this case within the purview of part II of section 304 of the Penal Code. So far as the present case is concerned, it is for the defence to show from the prosecution evidence that the case of the prosecution would not fall within the purview of clause 3 of section 300. Clause 3 of section 300 reads as under:

"3rdly -- If it is done with the intention of causing bodily injury to any person and the bodily injury intended to be inflicted is sufficient in the ordinary course of nature to cause death,"

So far as this clause is concerned, what is required to be proved by the prosecution is that an injury is caused by the accused as he had an intention to cause bodily injury and that bodily injury intended to be inflicted is sufficient in the ordinary course of nature to cause death. In the instant case, accused went home after scuffle as per say of PW 4. Accused had with him axe at the time of scuffle as per the say of PW 5. Accused with his axe inflicted two blows on the head of the deceased. It is revealed from the evidence of PW 4 that when the accused ran into his house, Natwar did not chase him. Natwar stood there and then. Natwar was not saying anything. Natwar was standing quietly. Natwar was not bleeding from any part of his body at that time. When Ramesh came back, Natwar did not make any attempt to snatch away the axe from Ramesh. On giving two blows of axe to Natwar, he fell down and Ramesh ran away. This evidence in the cross-examination suggests that Natwar has not responded or reacted to any of the act or omission of Ramesh to assault Natwar. This evidence extracted by the defence in the cross-examination, in our opinion, takes out the case of the accused from exception 4 to section 300. There was an attempt on the part of the defence to contend that the case may fall within exception 4 of section 300 in view of the evidence that there was scuffle before the incident took place. In view of the evidence of PW 4 in her cross-examination, there does not appear to be any fight between the accused and the deceased and there was no reason for any passion to go high and any fight or quarrel can be between the two persons. But if one is keeping quiet and not responding to any of the instigations of the otherside, it cannot be said that there was fight or quarrel, but it is pure and simple assault on the person who receives the blows. From the cross-examination of PW 4 it is clear that the accused has taken not only undue advantage of quietness of the deceased at the relevant time but, has also acted in cruel and unusual manner. Natwar is the brother-in-law of the accused. There may be quarrel between husband and wife in life. Simply because Gajiben was repeatedly running away to her parent's house and simply because deceased was known as 'buly' that itself cannot be said that the deceased was at fault for all the time in the matrimonial dispute. Even if that be, then also there was no reason for the accused to inflict axe

injuries on the person of the deceased. Therefore, in our opinion, the case of the accused does not fall within the purview of explanation 4 to section 300 nor can it be said to be falling within part II of section 304 in view of the alleged vague opinion of the doctor about the sufficiency of the injuries to cause death.

In view of the above discussion, we do not find any reason to interfere with the reasoning given by the learned Principal City Sessions Judge holding accused guilty of offence punishable under section 302 of the Penal Code.

In the result, the appeals fails and is dismissed.

.....

(vjn)